

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KIMBERLY DOWADAIT,
as Personal Representative of the Estate
of ROGER DOWADAIT, Deceased,

CASE NO. 04-CV-71124-DT
HON. LAWRENCE P.
ZATKOFF

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

OPINION AND ORDER

AT A SESSION of said Court, held in the
United States Courthouse, in the City of Port Huron,
State of Michigan, on April 12, 2007

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This matter is before the Court on Defendant's Motion for Judgment on the Pleadings (Docket #85). This matter was discussed at the Final Pre-Trial Conference held on April 5, 2007, at which time the Court informed Defendant that this Motion would be denied. Plaintiff has not filed a response, nor does the Court find it necessary to wait for one. The Court finds that the decisional process will not be aided by oral arguments. Therefore, pursuant to E.D. Mich. Local R. 7.1(e)(2), it is hereby ORDERED that the motion be resolved on the brief submitted, without this Court entertaining oral arguments. For the reasons that follow, Defendant's Motion for Judgment on the Pleadings is DENIED.

II. BACKGROUND

Approximately two years ago, on May 9, 2005, this Court issued an Opinion and Order that, among other things, denied Defendant's motion for summary judgment on Plaintiff's fraud claim. Subsequently, the Court stayed the case for a period of time in order to allow the Michigan Supreme Court to rule on two separate cases that were determinative of issues before this Court. Despite two motions for reconsideration filed by Defendant that addressed the issue of fraud on at least some level, Defendant never argued that it was entitled to judgment on the pleadings with respect to Plaintiff's fraud claim.

III. ANALYSIS

Although Fed. R. Civ. P. 12(c) provides that a motion for judgment on the pleadings may be raised at any time, the Court finds that Defendant's motion is both untimely and meritless. First, Defendant should have brought this motion over two years ago or, in the alternative, as part of the motion for reconsideration filed by Defendant following the Court's May 9, 2005, Opinion and Order. Second, as the Defendant briefed the merits of Plaintiff's fraud claim and the Court has repeatedly ruled that the fraud claim is viable, the Court finds that it would contravene the interests of justice to dismiss the fraud claim at this stage of the proceedings because it was not sufficiently pled.

IV. CONCLUSION

Accordingly, and for the reasons set forth above, Defendant's Motion for Judgment on the Pleadings is DENIED.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: April 12, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on April 12, 2007.

s/Marie E. Verlinde

Case Manager
(810) 984-3290